

## The Uyghur Forced Labor Prevention Act: What U.S. Companies with China-Based Supply Chains Should Know

January 24, 2022

### Key Points

- On December 23, 2021, President Biden signed the UFLPA into law after it unanimously passed both chambers of Congress. The UFLPA aims to strengthen the forced labor statute by prohibiting the importation and entry of any goods made with forced labor in the XUAR of China, and establishes several enforcement mechanisms and procedures to do so.
- By June 21, 2022, CBP must begin applying a rebuttable presumption that the following goods are prohibited from importation and not entitled to entry into the United States (1) “[a]ny goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part” in the XUAR and (2) any goods produced by entities identified in an enforcement strategy developed by the interagency FLETF.
- Also by June 21, 2022, the FLETF must issue an enforcement strategy for ensuring that goods produced with forced labor in China, not limited to the XUAR, are not imported into the United States. The strategy must contain, among other elements, a listing of entities and products involved in forced labor and “guidance to importers” with respect to forced labor due diligence. The FLETF will open a [public comment period](#) on January 24, 2022, for 45 days to consider public input on the elements of the strategy.
- By March 23, 2022, the State Department must develop a diplomatic strategy to enhance international awareness of and combat forced labor in the XUAR through coordination with allies, NGOs and private sector entities. The diplomatic strategy must also identify Chinese entities that use or benefit from XUAR forced labor and their agents that import goods into United States.
- The UFLPA also requires the President, by June 21, 2022, to identify and impose sanctions under the UHRPA on any foreign individual or entity that he determines is responsible for serious human rights abuses in connection with forced labor with respect to Uyghurs and other persecuted groups in the XUAR.

### Background

### Contact Information

**Akin Gump** has extensive experience advising on compliance, enforcement and remediation activities related to forced labor and related supply chain concerns. If you have questions about this alert, would like assistance drafting a comment regarding the FLETF enforcement strategy or would like more information from our team, please contact:

**Lars-Erik Hjelm**  
Partner  
[lhjelm@akingump.com](mailto:lhjelm@akingump.com)  
Washington, D.C.  
+1 202.887.4175

**Suzanne Kane**  
Partner  
[skane@akingump.com](mailto:skane@akingump.com)  
Washington, D.C.  
+1 202.887.4037

**Nicholai Diamond**  
Counsel  
[ndiamond@akingump.com](mailto:ndiamond@akingump.com)  
Washington D.C.  
+1 202.887.4301

**Sarah B. W. Kirwin**  
Associate  
[skirwin@akingump.com](mailto:skirwin@akingump.com)  
Washington, D.C.  
+1 202.887.4313

**Bridget Brennan**  
Associate  
[bbrennan@akingump.com](mailto:bbrennan@akingump.com)  
Los Angeles  
+1 310.728.3360

On December 23, 2021, President Biden signed the [Uyghur Forced Labor Prevention Act](#) (UFLPA) into law after it unanimously passed both chambers of Congress. The stated objective of the UFLPA is to “stop the importation of any goods made with forced labor, including those goods mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region (XUAR).”<sup>1</sup> As described in greater detail below, the UFLPA establishes several enforcement mechanisms and procedures to do so. In particular:

- Section 2 of the UFLPA requires the interagency Forced Labor Enforcement Task Force (FLETF) to develop an enforcement strategy by June 21, 2022, to ensure that goods produced with forced labor in China, not limited to the XUAR, are not imported into the United States. The UFLPA requires the enforcement strategy to contain, among other elements, a listing of entities and products involved in forced labor and “guidance to importers” with respect to forced labor due diligence.<sup>2</sup> The Department of Homeland Security (DHS), chair of the FLETF, will open a [public comment period](#) on January 24, 2022, for 45 days to consider public input on the elements of the strategy.
- Section 3 of UFLPA requires U.S. Customs and Border Protection (CBP) to apply a “rebuttable presumption,” beginning on June 21, 2022, and absent very narrow exceptions, that “any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the [XUAR],” or that are produced by certain identified entities, are prohibited from importation into the United States and are not entitled to entry.<sup>3</sup>
- Section 4 of the UFLPA requires the Department of State to develop a diplomatic strategy by March 23, 2022, that must contain, among other elements, a plan to enhance international awareness of and combat forced labor in the XUAR through coordination with allies, non-governmental organizations (NGOs) and private sector entities and a list of entities in China that use or benefit from forced labor in the XUAR and their agents for importation of the goods into United States.<sup>4</sup>
- Section 5 of the UFLPA requires the President, also by June 21, 2022, to identify and impose sanctions under the Uyghur Human Rights Protection Act (UHRPA) on any foreign individual or entity that he determines is responsible for serious human rights abuses in connection with forced labor with respect to Uyghurs and other persecuted groups in the XUAR.<sup>5</sup>

The UFLPA contains an eight-year sunset provision, after which Sections 3, 4 and 5 of the bill will expire, unless the President determines prior to that date via a report to Congress that China “has ended mass internment, forced labor, and any other gross violations of human rights experienced by the Uyghurs, Kazakhs, Kyrgyz, Tibetans, and members of other persecuted groups” in the XUAR.<sup>6</sup>

The final text of the UFLPA arose from slightly differing approaches in earlier bills passed individually by the House and Senate. The Senate bill ([S.65](#)), sponsored by Sen. Marco Rubio (R-FL) and passed on July 14, 2021, formed the basis of the final UFLPA text. By contrast, the House bill ([H.1155](#)), sponsored by Rep. Jim McGovern (D-MA) and passed on December 8, 2021, contained a blanket prohibition on the importation of all goods made wholly or in part in the XUAR, as opposed to the rebuttable presumption described above, and required listed companies to disclose certain activities in the XUAR to the U.S. Securities and Exchange Commission (SEC).

Both of these elements were removed from the final compromise language that was subsequently enacted.

The UFLPA builds on the foundational authority for regulating imports of goods produced from forced labor found in Section 307 of the Tariff Act of 1930 ([19 U.S.C. § 1307](#)). Section 307 prohibits the importation of “[a]ll goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor[,] forced labor[, or] indentured labor,” which includes forced or indentured child labor. Such merchandise is not only subject to exclusion and seizure, its importation may provide a basis for the imposition of civil or criminal penalties under [19 U.S.C. § 1592](#) (penalties for fraud, gross negligence or negligence), [19 U.S.C. § 1595a](#) (importations contrary to law) and [18 U.S.C. § 545](#) (smuggling goods into the United States). We described other recent amendments to Section 307 and enforcement trends in an earlier Client Alert available [here](#).

## Impact of the UFLPA on U.S. Imports

### Rebuttable Presumption of Inadmissibility for Imports Produced in the XUAR or by a Listed Entity

The UFLPA’s most tangible impact on U.S. imports is the rebuttable presumption established in Section 3 of the UFLPA. Starting on June 21, 2022, subject to certain exceptions and time limits, CBP must presume that the following two categories of goods are prohibited under Section 307 and not entitled to entry into the United States:

1. “Any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part” in the XUAR. We note that the UFLPA, like Section 307, does not provide for any exception for goods that were substantially transformed in another region of China, or another country.
2. Any goods produced by entities that are identified in the FLETF enforcement strategy.

CBP must apply this presumption unless it determines that the importer of record has rebutted it by fulfilling the following three requirements:

1. Demonstrating full compliance with the guidance issued in the FLETF enforcement strategy and any accompanying regulations;<sup>7</sup>
2. Completely and substantively responding to inquiries for information by CBP<sup>8</sup> and
3. Demonstrating to CBP “by clear and convincing evidence” that the product was not mined, produced or manufactured wholly or in part by forced labor.<sup>9</sup>

In the event that CBP determines that the presumption does not apply because the importer rebutted it, CBP must issue a public report to Congress within 30 days that identifies the excepted good and the evidence CBP considered in the determinations. This reporting requirement lends an additional layer of public and political scrutiny to CBP’s administration of the rebuttable presumption, the exception to which was already very narrow. This scrutiny could lead CBP to be very conservative in its assessment of the burdensome “clear and convincing evidence” standard.

In the event that CBP determines that the presumption does not apply because the importer rebutted it, CBP must issue a public report to Congress within 30 days that identifies the excepted good and the evidence CBP considered in the determinations.

This reporting requirement lends an additional layer of public and political scrutiny to CBP's administration of the rebuttable presumption, the exception to which was already very narrow. This scrutiny could lead CBP to be very conservative in its assessment of the burdensome "clear and convincing evidence" standard.

### The FLETF Enforcement Strategy: Guidance to Importers

No later than June 21, 2022, the FLETF must submit a comprehensive report to Congress that supports the enforcement of Section 307 in order to prevent the importation of goods mined, produced or manufactured in whole or in part with forced labor in China. Notably, the UFLPA directs that the enforcement strategy address forced labor in China as a whole, but especially in the XUAR.

The UFLPA requires the enforcement strategy to include the following seven elements:

1. A comprehensive listing of entities in the XUAR that use forced labor, entities that work with the XUAR government to facilitate the use of forced labor, a list of products produced by those entities, a list of entities that exported those products, a list of entities that source material from the XUAR and a plan for updating those lists. The lists must also include an evaluation of "pairing assistance," "poverty alleviation" and similar programs involving labor by minority or persecuted groups in China. The entity lists will be incorporated into the rebuttable presumption requirement for imports described above.
2. "Guidance to importers" on due diligence, supply chain tracing and evidentiary standards for demonstrating that goods were not produced in the XUAR or with forced labor. Adherence to this guidance will also be incorporated into the rebuttable presumption requirement for imports described above.
3. A comprehensive risk assessment identifying threats that are likely to lead to the importation of goods made with forced labor directly from China or through third countries, along with procedures that can be implemented or improved to reduce those threats.
4. A plan to coordinate with nongovernmental organizations and private sector entities to implement and update the strategy.
5. Recommendations for tools and technologies that can be adopted by CBP to ensure that CBP can accurately identify and trace goods made in XUAR.
6. A description of how CBP plans to enhance its use of legal authorities and other tools to enforce Section 307, such as through the initiation of pilot programs for cargo examinations.
7. A description of additional resources necessary for CBP to effectively enforce Section 307.

The strategy must be submitted in an unclassified form, which will provide needed transparency for importers that has been lacking in CBP's current enforcement efforts. However, it may also include a classified annex, which could result in increased Congressional and enforcement scrutiny on targeted areas.

The UFLPA requires the FLETF to solicit public comments on the development of the strategy. Accordingly, DHS will open a **public comment period** on January 24, 2022. Comments will be due on or about March 10, 2022, with a public hearing to follow.

DHS requested comment on a “non-exhaustive list” of 18 questions related to the UFLPA and its enforcement. The following questions are likely of most interest to importers and other interested parties such as exporters:

- Question 11: What due diligence, effective supply chain tracing and supply chain management measures can importers leverage to ensure that they do not import any goods mined, produced or manufactured wholly or in part with forced labor from the People’s Republic of China (PRC), especially from the XUAR?
- Question 12: What type, nature and extent of evidence can companies provide to reasonably demonstrate that goods originating in the PRC were not mined, produced or manufactured wholly or in part with forced labor in the XUAR?
- Question 13: What tools could provide greater clarity to companies on how to ensure upcoming importations from the PRC were not mined, produced or manufactured wholly or in part with forced labor in the XUAR? To what extent is there a need for a common set of supply chain traceability and verification standards, through a widely endorsed protocol, and what current government or private sector infrastructure exists to support such a protocol?
- Question 14: What type, nature and extent of evidence can demonstrate that goods originating in the PRC, including goods detained or seized pursuant to section 307 of the Tariff Act of 1930, as amended, were not mined, produced or manufactured wholly or in part with forced labor?
- Question 15: What measures can be taken to trace the origin of goods, offer greater supply chain transparency and identify third-country supply chain routes for goods mined, produced or manufactured wholly or in part with forced labor in the PRC?

Importers may wish to submit comments related to these items or engage with their applicable trade associations to do so.

The request for comments also include several questions targeted at NGO stakeholders, such as questions about the risks of importing goods made with forced labor (questions 1-3), the forms of forced labor in China generally and the XUAR specifically (question 4), as well as a call for suggestions for high-priority sectors and supply chains for enforcement efforts (questions 5-8).

DHS issued the request for comments in its role as chair of the FLETF pursuant to the United States-Mexico-Canada Agreement Implementation Act (“USMCA Implementation Act”) ([19 U.S.C. § 4681](#)), which established the FLETF. As chair, DHS has the power to determine the participation of U.S. government agencies in the FLETF beyond the departments of State, Treasury, Justice, Labor, and the Office of the U.S. Trade Representative, as well as to break any tie vote on any decision by the FLETF. See [Executive Order 13923](#). We expect that DHS’s chairmanship will provide a strong platform for CBP to drive the preparation of the enforcement strategy. It is thus likely that CBP’s existing approach to forced labor enforcement will be a key influence on the final enforcement strategy.

### **The Diplomatic Strategy: Other Considerations for Importers**

As noted above, the UFLPA tasks the State Department with the development of a diplomatic strategy by March 23, 2022, to enhance international awareness of and address forced labor in XUAR through public diplomacy and coordination with allies, NGOs and private sector entities. This will also be an interagency effort, as the

Secretary of State is required to consult with the Secretaries of Commerce, Homeland Security and Treasury.

The diplomatic strategy must contain two core elements, the first focused on creating awareness and the second focused on tangible actions that support the enforcement of the UFLPA and other existing laws. The private sector is implicated in both elements. Specifically, under the first element, the State Department must include a plan to “coordinate and collaborate with” NGOs and private sector entities to raise awareness about forced labor in the XUAR. Under the second element, however, the impact to the private sector is more tangible. In that regard, the report must:

- Identify entities in China or their affiliates that use or benefit from forced labor in XUAR and foreign persons that act as agents of those entities to import goods into United States;
- Outline a plan to work with the private sector to conduct supply chain due diligence to prevent the importation of goods made with forced labor; and
- Develop a plan of actions taken under existing authorities to address forced labor in XUAR, including under the Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7101), the Elie Wiesel Genocide and Atrocities Prevention Act of 2018 (22 U.S.C. § 2656 note) and the Global Magnitsky Human Rights Accountability Act (22 U.S.C. § 2656 note).

As it is due in March 2022, prior to both the FLETF enforcement strategy and the President’s sanctions report, the diplomatic strategy is likely to influence their contents. Like the FLETF enforcement strategy, the diplomatic strategy must be unclassified but may also include a classified annex.

### **Impact of the UFLPA on Transactions with Foreign Persons and Entities**

The UFLPA amends the Uyghur Human Rights Protection Act of 2020 (UHRPA) to require that the President identify in a report to Congress each foreign individual or entity—including any Chinese official—that the President determines is responsible “for serious human rights abuses in connection with forced labor” with respect to Uyghurs and other persons in XUAR. The President must submit this report by June 21, 2022, with subsequent determinations included in the annual UHRPA report. It is likely that the President’s report will be informed by the persons and entities identified as using or benefitting from forced labor in the State Department’s diplomatic strategy, which is due 90 days earlier, as well as the list in the FLETF enforcement strategy, which will be in development simultaneously.

The President is then required to impose sanctions under the UHRPA with respect to the identified persons and entities. Any sanctioned individual is ineligible for admission into the United States and ineligible to hold a U.S. visa. Further, the President may impose civil and criminal penalties on foreign individuals and entities that the President determines are responsible for serious human rights abuses in connection with forced labor.

### **Overall UFLPA Timeline**

January 24, 2022 (30 days after enactment)	The FLETF initiates a public comment period lasting 45 days regarding its enforcement strategy. The comment period will be followed by a public hearing.
March 10, 2022	Public comments on the FLETF enforcement strategy are due on or about this date.
March 23, 2022 (90 days after enactment)	The State Department's diplomatic strategy is due to Congress on or before this date.
June 21, 2022 (180 days after enactment)	<p>CBP must begin applying the rebuttable presumption to imports on this date.</p> <p>The FLETF enforcement strategy report, including the guidance to importers, is due to Congress on or before this date.</p> <p>The President's sanctions report is due to Congress on or before this date.</p>

<sup>1</sup> UFLPA, Pub. L. No. 117-78, Sec. 1(2).

<sup>2</sup> *Id.*, Sec. 2(c).

<sup>3</sup> *Id.*, Sec. 3(a).

<sup>4</sup> *Id.*, Sec. 4.

<sup>5</sup> *Id.*, Sec. 5(c).

<sup>6</sup> *Id.*, Sec. 6.

<sup>7</sup> *Id.* Sec. 3(b)(1).

<sup>8</sup> *Id.* Sec. 3(b)(1).

<sup>9</sup> *Id.* Sec. 3(b)(2).

[akingump.com](http://akingump.com)